



The Leading Technical Newsletter for Governmental Defined Contribution Plans since 1987

*Published by The Government Markets Division of Great-West Retirement Services – Specialists in Government Defined Contribution Plans*

VOLUME 18

April 1, 2005

Edited by

Gregory E. Seller, Senior Vice President  
Government Markets (800) 933-9808

Marilyn R. Collister, Assistant Vice President  
Plan Design & Compliance (800) 537-2033, Ext. 73819

## **Grandfathered Governmental 401(k) Plans May Add Roth Contributions Effective January 1, 2006**

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) enacted new Internal Revenue Code (Code) section 402A providing for Roth 401(k)s and Roth 403(b)s effective January 1, 2006. Since that effective date is now just around the corner, the U.S. Treasury Department and the Internal Revenue Service (IRS) issued proposed Roth 401(k) regulations on March 2, 2005.

Great-West Retirement Services<sup>SM</sup> is currently enhancing our recordkeeping system to provide services to Roth 401(k) plans effective January 1, 2006.

The proposed Roth 401(k) regulations amend the final 401(k) regulations that were published in December 2004. These proposed regulations allow plan sponsors to amend their 401(k) plan document to permit Roth contributions. If amended, a plan may permit an employee who makes elective contributions to a 401(k) plan to designate some or all of those contributions as after-tax "Roth" contributions rather than pre-tax contributions. Each participant's combined Roth and pre-tax contributions are subject to a single 401(k) contribution limit for the year. Each participant may decide what percentage of their contributions to contribute on a pre-tax basis and what percentage to contribute on an after-tax Roth basis. If the plan document provides that forfeitures are allocated to participant accounts, such forfeitures may NOT be allocated to the designated Roth contribution account.



For example, in 2006 the basic limit is \$15,000 and the limit for participants age 50 or over during the calendar year is \$20,000. Participant "P" is eligible for the age 50 catch-up and decides to contribute \$10,000 as pre-tax contributions and \$10,000 as Roth contributions. Participant "Q" is also eligible for the age 50 catch-up and decides to contribute \$15,000 as pre-tax contributions and \$5,000 as Roth contributions.

Contributions designated as Roth contributions are includible in gross income at the time they are contributed. If none of the Roth contributions are distributed prior to the date that is five years after the date of the first Roth contribution, then both the Roth contributions and the income thereon are excluded from gross income when distributed from the plan.

Under the proposed regulations, the plan document must be amended to permit Roth contributions. Roth contributions are defined as elective contributions made under a qualified cash or deferred arrangement (i.e., 401(k) plan) that are:

- irrevocably designated as Roth contributions by the employee at the time of the cash or deferred election;
- treated by the employer as includible in the employee's income at the time the employee would have received the contributed amounts in their paycheck (e.g., by treating the contributions as wages subject to applicable withholding taxes); and
- maintained by the plan in a separate account.

Roth contributions are made on an after-tax basis and are treated as "investment" in the contract. Thus, such contributions must be separately accounted for from the date of the first contribution until the Roth account is completely distributed. The plan must maintain a record of each of the following:

- the Roth contributions,
- earnings and losses,
- other credits or charges,
- withdrawals and
- distributions.

Unlike corporate ERISA plans, governmental 401(k) plans are exempt from many of the nondiscrimination rules under the Code. Governmental plans do have to comply with the following provisions in the proposed regulations:

- A designated Roth contribution must satisfy the requirements applicable to governmental plans with respect to elective contributions made under a qualified 401(k) cash or deferred arrangement. Thus, Roth contributions are subject to the nonforfeitability and distribution restrictions as well as

the required minimum distribution requirements of Code section 401(a)(9)(A) and (B), and;

- The extent to which a participant may elect whether a particular distribution is to be made from the designated Roth contribution account or other accounts must be set forth in the plan document. Designated Roth contributions may be rolled over only to another plan maintaining a designated Roth contribution account or to a Roth IRA.

The IRS and Treasury have specifically requested comments on issues where guidance is not provided in the proposed regulations. For example, distributions from Roth IRAs are considered to be made first from contributions (resulting in no taxable income) but the 401(k) rules generally require pro-rata recovery of the employee's investment in the contract for after-tax contributions. Comments are solicited with respect to the rules that should apply to distributions of designated Roth contributions as well any other issues under Code section 402A.

Great-West Retirement Services would like to hear from you if you have issues or questions that you would like submitted to Treasury and the IRS in our comment letter. Comment letters must be received by the Treasury Department on or before May 31, 2005.

Please do not hesitate to contact us with questions or your comments on the proposed regulations.

---

Cathy Matusiewicz Account Manager Irvine, CA 800-933-9808	Brion Beetz RVP, San Ramon, CA 800-274-8491	Tim Jones RVP, State of Washington 800-462-9277	Paul Corchado Account Manager Chicago, IL 800-926-5862	Mike Abkowitz Assoc. Manager Austin, TX 866-613-6189	Marie Panciocco VP, Eastern Region 800-596-3384
Muriel Knapp RVP, Orlando, FL 800-360-2684	Reston, VA 800-879-3133	Joe Dionisi RVP, Baton Rouge, LA 800-937-7604	Paul Citron VP, Southern Region 888-600-2763	Michael Sole VP, Market & Strategic Dev. 800-926-5862	Pennsylvania 800-222-1567
Vince Camacho RVP, Guam 671-475-8938	Duane Jeffers VP, Great Lakes Region 800-284-0444	Kris Morton Assoc. Manager Ohio 800-284-0444 ext. 11	Fred Bender VP, Rocky Mountain & Texas 800-947-4409	Kent Morris VP, Western Region 800-382-8924	John Steggell Account Manager, Irvine, CA 800-933-9808
Julie Klassen Regional Director, Market Development, Western Region 800-933-9808					Britt Palmer Regional Director, Market Development, Eastern Region 800-537-2033 ext. 72083